IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1217 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPAK @ LALO JAGDISHBHAI VYAS - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Applicant(s) : 1,
MS HANSA PUNANI APP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 27/10/2005

ORAL JUDGMENT

1.This petition under Article 226 of the Constitution of India challenges the order of externment dated 18.06.2005 passed by the respondent No. 2, Dy.

Commissioner of Police, in exercise of powers under Sub-section 1 of Section 56(b)of Bombay Police Act, 1951('the Act' for short) and also the order in appeal dated 10.08.2005 passed by the appellate authority, respondent No. 1 herein, by which the earlier order is confirmed as violative of Articles 14, 19 & 21 of the Constitution of India.

2.The show-cause notice dated 21.04.2004 under Section 59 of the Act was given to the petitioner that why he should not be externed from the city limit of Ahmedabad Rural and the adjoining districts of Gandhinagar, Kheda and Mehsana for a period of 2 years since the petitioner being a headstrong person, required to be externed immediately. The main allegation against the petitioner is that he uses weapons to extort money from the members of the public and occasionally administers threat to take away their life.

A reply was given by the petitioner and thereafter, final reply was also submitted relying on certain case law as decided by this Court with regard to the subject matter. It was submitted to the Competent Authority that allegations were vague and frivolous. Even the

offences has also not been registered and in two cases, he was already acquitted by the Court.

However, the Competent Authority, the respondent No. 2 herein, after considering the reply of the petitioner, exercised the powers under Section 56(b) and externed the petitioner from the city limits of Ahmedabad Rural and the adjoining Districts of Gandhinagar, Kheda and Mehsana for a period of 2 years.

3.Being aggrieved and dissatisfied by the said order, an appeal was preferred under Section 60 of the Act before the respondent No. 1 and various contentions were raised, including that of legality and validity of the order of the Competent Authority, non observance of principles of natural justice, lack of adequate evidence or material to exercise powers under Section 56(b) and the mechanical approach of the Competent Authority, in considering the decision of the High Court, which was relied on by the petitioner, subject matter, though placed for consideration, was not considered in its correct perspective.

4.After considering the submissions in appeal and grounds

raised, the appellate authority after considering the record of the case, confirmed the order passed by the Competent Authority, wherein, reliance was also placed on various offences registered under the Bombay Prohibition Act, 1949.

5. Mr. H.R. Prajapati, learned Advocate for the petitioner however has restricted his argument on the ground that the order of the Competent Authority dated 18.06.2005 suffers from the vice of delay, inasmuch as the Show-cause Notice was issued on 21.04.2004, while the order of externment was passed on 18.06.2005. According to his submissions, even if the time taken by the petitioner for filing the reply is excluded, then also, the externing authority has taken more than 6 months and therefore, the above order is clearly in breach of law laid down by this Court in the decision in the case of **Sitaben M. Thakore Vs. Dy. Commissioner of Police reported in 1997 Cr.L.R.(Guj.) 139**. Therefore, he submitted that the orders of both the authorities are required to be quashed and set aside.

6. Learned APP Ms. Hansa M. Punani has submitted that the powers exercised by both the authorities are just and

proper, since the criminal activities of the externee necessitated such exercise and after considering the record of the case and relevant materials, the orders have been passed.

7. Having considered the rival submissions of the learned Advocates for the respective parties and on perusal of the record, it is evident that the externing authority has taken substantial time in passing the final order dated 18.06.2005, since the Show-cause Notice was issued on 21.04.2004 and reply was submitted immediately thereafter. The learned Advocate for the petitioner has rightly relied on the decision reported in 1997 Cr. L.R. (Guj.) 139, wherein the learned Single Judge of this Court after considering the requirement of Section 56 of the Act and the decision of the Division Bench of this Court in Special Civil Application No. 1295/94, where a reasonable period for exercising power under the Bombay Police Act, particularly Section 56(b)the Bombay Police Act, outer limit is prescribed not beyond six months and it was held that inquiry under Section 59 of the Act being of urgent nature, should be held as expeditiously as possible and in the given case, delay of beyond six

months is fatal to the order of externment. In the present case also, there is a delay in passing the final order by the externing authority, which remains unexplained by any sufficient reason and therefore the impugned Order dated 18.06.2005 passed by the respondent No. 2 requires to be quashed and set aside.

Besides the consideration of cases registered under the Bombay Prohibition Act, 1949, against the petitioner, which came to be relied and discussed by the appellate authority also amounts to non-application of mind while exercising powers under Section 56 B of the Act. It is trite that exercise of powers under Section 56(b) presupposes registration of offences under Chapter XII, XVI & XVII of the Indian Penal Code while for exercise of power under Section 57, requirement is totally different.

8. Under the circumstances, on both the above counts, the orders impugned fails the test of reasonableness, in exercise of powers by the statutory authority, competent as well as appellate, and therefore the same is held to be arbitrary, unreasonable and violative of Articles 14, 19 and 21 of the Constitution of India and

therefore the same is hereby quashed and set aside.

9. For the foregoing reasons, this petition is allowed. The impugned order of externment passed by the Dy. Commissioner of Police, Respondent No. 2 herein and the order of appellate authority dated 10.08.2005 are hereby ordered to be quashed and set aside. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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